



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue
Seattle, Washington 98101

November 3, 1999

Reply To

Attn Of: WCM-126

WA D00928 2302
11/3/99
4/c

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr Richard Padden, Member
Container Properties, L.L.C.
1216 14th Court East
Sumner, WA 98390

Re: **NOTICE OF VIOLATION**
Rhone-Poulenc Inc. Marginal Way Facility
WAD 00928 2302

FILE COPY

Dear Mr. Padden:

This Notice of Violation (NOV) is to inform Container Properties L.L.C. of violations of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6901 et seq., identified during an inspection conducted by the U.S. Environmental Protection Agency (EPA) at the above-referenced facility on October 8, 1999. The purpose of the inspection was to ensure that investigative derived waste (IDW) generated by Container Properties L.L.C. from the voluntary interim measure activities were managed in accordance with applicable regulations of the Resource Conservation and Recovery Act (RCRA).

At the time of the inspection, IDW was being containerized in a "roll off box". Mr. James Doesburg, of Directed Technologies Drilling, Inc., who was installing the equipment for the voluntary interim measure indicated that the size of the roll off box was approximately 10 cubic yards.

On Tuesday October 12, 1999, Mr. Pete Wold of RCI Environmental, Inc. and Ms. Kim Ogle of my staff discussed the observations from the October 8, 1999, inspection. Ms. Ogle asked whether this roll off box constituted a satellite accumulation area or a less-than-ninety day accumulation area. Mr. Wold indicated that the roll off box was a tank and was a less-than-90 day accumulation area.

EPA disagrees that the roll off box is a tank since it is not a stationary device (defined in 40 C.F.R. § 260.10). The roll off box is better defined as a container, a "...portable device in which a material is stored, transported, treated, disposed of, or otherwise handled."

Based on observations made during the inspection and information provided in the October 12, 1999, phone call, the following violations and deficiency were observed:

Violations:

- 1) The regulation at 40 C.F.R. § 262.34(a)(2) allows a generator to accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container. At the time of the inspection, the roll off box did not have a date upon it. Consequently, this constitutes a violation of 40 C.F.R. § 262.34(a)(2).
- 2) The regulation at 40 C.F.R. § 262.34(a)(3) allows a generator to accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that while being accumulated on-site, each container is labeled or marked clearly with the words, "Hazardous Waste". At the time of the inspection, the roll off box did not have the words, "Hazardous Waste" marked on it. Consequently, this constitutes a violation of 40 C.F.R. § 262.34(a)(3).

Deficiency:

40 C.F.R. 262.34(a)(4) requires a generator to comply with the requirements for owners and operators in Subparts C and D in 40 C.F.R. Part 265, § 265.16, and § 268.7(a)(4). At the time of the inspection, no facility representatives were available to allow the inspector access to the facility's preparedness and prevention equipment or the facility files to ensure that the facility's operating record had a contingency plan, emergency procedures and a waste analysis plan. It is unknown whether the facility had these required systems and plans in place.

Required Action:

The above violations may subject Container Properties, L.L.C. to enforcement action under Section 3008 of RCRA, 42 U.S.C. § 6928, including the assessment of penalties. Within fifteen (15) days of receipt of this NOV, EPA requests that Container Properties, L.L.C. respond to the above violations and deficiency and indicate what measures it will take to prevent future noncompliance. As you were informed in the October 12, 1999 phone call, EPA and the Washington State Department of Ecology have determined that this specific IDW waste stream is a listed hazardous waste and is not considered to be a contaminated media. Therefore, EPA requests that Container Properties, L.L.C., submit copies of the hazardous waste manifest(s) and any analysis conducted on the IDW in conjunction with the waste's disposal.

EPA Reservation of Rights:

Notwithstanding this NOV or Container Properties LLC.'s response, EPA reserves the right to take any action pursuant to RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), or any other applicable legal authority, including without limitation, the right to seek injunctive relief, implementation of response actions or corrective measures, cost recovery, monetary penalties, and punitive damages. Container Properties LLC.'s response to this NOV does not constitute compliance with RCRA.

Nothing in this NOV or your response shall affect the Facility's duties, obligations, or responsibilities with respect to the Facility under local, state or federal regulation.

Thank you for your prompt attention to this important matter. Please direct any questions you may have regarding this NOV to Kim Ogle at (206) 553-0955.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cotton" with a stylized flourish at the end.

Jamie Sikorski, Manager
RCRA Compliance Unit

cc: B. Maeng, Ecology, NWRO
D. Verfurth, Carney, Badley, Smith & Spellman
C. Blumenfeld, Perkins Coie
M. Smith, AGI Technologies
P. Wold, RCI Environmental Inc.

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M. Smith, AGI Technologies
P. Wold, RCI Environmental Inc.

bcc: J. MacDonald, ORC
K. Ogle, OWCM RCU
R. Fuentes, OEA
M. Bailey, OEA
B. Duncan, OEA
June Alexander, RCU

CONCURRENCES:

INITIALS	<i>Kas for</i>	<i>some</i>	<i>Yow for</i>	<i>Kas for</i>	POLICY FILE		RCRIS INFO SUBMITTED	
NAME	BROWN	PEER REVIEW	OGLE	MACDONALD	YES	NO	YES	NO
DATE	11/3	11/3	11/3	11/3/99		X	X	
							ATTACHED	

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